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INDIGENOUS ISSUES

Joint written statement*/ submitted by the Indigenous World Association, the International Indian Treaty Council and the International Organization of Indigenous Resource Development, non-governmental organizations in special consultative status, the Indian Law Resource Centre and the Saami Council, non-governmental organizations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The following is submitted as a joint consensus statement of the Indigenous Caucus at the United Nations Commission on Human Rights Inter-sessional working group established in accordance with Commission on Human Rights resolution 1995/32 in its Fifth Session, 18-29 October 1999:

POSITION OF INDIGENOUS PEOPLES
IN REGARD TO THE USE OF THE TERM INDIGENOUS PEOPLES IN THE UNITED NATIONS DRAFT DECLARATION FOR THE RIGHTS OF INDIGENOUS PEOPLES

THE CONSISTENT POSITION OF INDIGENOUS PEOPLES' REPRESENTATIVES

Since the establishment of the Working Group on Indigenous Populations in 1982, indigenous representatives have consistently asserted the critical importance of accurately identifying indigenous peoples as peoples in the work of the United Nations. There can be no doubt that we are peoples with distinct historical, political and cultural identities and will remain so. We are united by our histories as distinct societies, as well as by our languages, laws and traditions. In addition, the profound social, cultural, economic and spiritual relationships of indigenous peoples with our lands, territories and resources are unique. Indigenous peoples are unquestionably peoples in every legal, political, social, cultural and ethnological meaning of the term. It would be discriminatory, illogical and unscientific to identify us in the United Nations Draft Declaration on the Rights of Indigenous Peoples as anything less than peoples.

Our status as peoples is fundamental to the recognition of our right of self-determination in all its collective political, economic, social, cultural and spiritual dimensions. To deny our right to define ourselves and to be recognised as indigenous peoples is to deny a fundamental expression of our right to self-determination.

In 1989, in its General Comment No.18 (37) on *Non-discrimination*, the Human Rights Committee stated in par. 7:

'...the Committee believes that the term 'discrimination' as used in the Covenant should
be understood to imply any distinction, exclusion, restriction or preference which is based on any
ground such as race, colour, sex, language, religion, political or other opinion, national or social
origin, property, birth or other status, and which has the purpose or effect of nullifying or
impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights
and freedoms.'

Regrettably, certain States persist in seeking to deny or otherwise restrict the status of indigenous peoples as 'peoples'. This is done to deny us the recognition and enjoyment of our right to self-determination on an equal footing with other peoples. These positions are discriminatory and, therefore, run counter to the most fundamental purposes and principles of the United Nations.

We hereby request, as we have done in the past, that Member States of the United Nations fully respect the U.N. Charter, the International Covenants and other human rights instruments in the present standard-setting process. In particular, Member States have made solemn and sacred commitments by adopting the UN Charter, the constitutive document of the United Nations. In accordance with article 1(3) of the Charter, one of the central purposes of the United Nations is to:

> *"achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."*

The International Covenants on Human Rights also impose binding legal obligations, providing in common article 1(3) that:

> *"The States Parties to the present Covenant . . . shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."*

Clearly, States are obliged to refrain from any action which undermines or violates the constitution of the United Nations. In regard to recognition of our status as 'peoples' and our right to self-determination, we call upon the Commission on Human Rights and all States present at this session to unequivocally resist any attempts by individual States to contravene UN Charter purposes and principles by proposing a distinction based on race or other prohibited grounds. In particular, by proposing to square bracket the term indigenous peoples, some States are seeking to open the door to developing double standards that are clearly discriminatory.

We continue to insist that the United Nations apply its own standards universally and equally, that it recognize and respect the same fundamental human right to self-determination to us as for other peoples in the world, that it act without prejudice and without discrimination. We cannot agree, now or at any future time in consideration of the Draft Declaration, to any qualification, explanation, definition, bracketing, parenthesising or footnoting of the term indigenous peoples or peoples.

INTERNATIONAL LEGAL USAGE

The term indigenous peoples is well-established in international legal practice. It has been consistently employed by the United Nations' own expert human rights treaty bodies, the

Inter-American Commission on Human Rights, the institutions of the European Union, the World Bank and the Asian Bank. Examples of such international legal usage can be found in:

- the Concluding Observations of the Committee on the Elimination of Racial Discrimination, and General Recommendation XXIII(51) concerning Indigenous Peoples adopted by that Committee on 18 August 1997
- the views and Concluding Observations of the Human Rights Committee in relation to implementation of the International Covenant on Civil and Political Rights
- the reports and decisions of the Inter-American Commission on Human Rights
- the resolutions of the European Parliament, and the Council of Ministers of the European Union
- the World Bank's Operational Directive 4.20
- the Asian Development Bank's 1997 policy on indigenous peoples

DOMESTIC USAGE

There are numerous examples of use of the terms indigenous peoples and Aboriginal peoples in the practice of States. These include constitutional guarantees, legislative enactments, judicial decisions, negotiated treaties and agreements, and national and local policy. Examples include:

- Australia's 1993 Native Title Act
- the Constitution of Bolivia (Article 171), the Popular Participation Law of Bolivia, INRA Law of Bolivia, Educational Reform, Environment and Hydrocarbon of Bolivia
- the Commission on Indigenous Peoples of the National Congress of Peru, 1999
- Section 35 of the Canadian Constitution Act, 1982
- the Constitution of Colombia (Article 246)
- the Agreement on Identity and Rights of Indigenous Peoples of Guatemala, 1994
- the Constitution of Malaysia (Article 151)
- Denmark's 1994 strategy for support to indigenous peoples
- the Political Constitution of the Republic of Ecuador (Article 83)
- the Constitution of Mexico (Article 4)
- the Constitution of Nicaragua (Article 5)
- the Constitution of Paraguay (Article 62)
- Germany's 1996 policy for indigenous peoples in Latin America
- Netherlands' 1993 policy on indigenous peoples
- Panama's environmental law
- the Philippines 1997 Indigenous Peoples' Rights Act
- the United Kingdom's 1995 Guidance on Ethnicity, Ethnic Minorities and Indigenous Peoples
- Spain's 1997 strategy for cooperation with indigenous peoples
- Switzerland's 1998 action for indigenous peoples

- the United States Code: 7 U.S.C. Section 1738k(d)(1); Title 22 (9 separate Sections), 42 U.S.C. Section 11701(17) and the United States S. Con. Res. 44, 103d Cong., 1st Sess. (1993)

PRACTICE IN THE COMMISSION ON HUMAN RIGHTS WORKING GROUP ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Since the establishment of the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples in 1995, the following States have accepted usage of the term indigenous peoples: Angola, Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, Guatemala, Malaysia, Mexico, New Zealand, Norway, Pakistan, Peru, the Philippines, the Russian Federation, Spain, Sweden, Switzerland and Venezuela.